



Federal Communications Commission
Washington, D.C. 20554

July 22, 2009

DA 09-1575

In Reply Refer To:

1800B3-ATS

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Mr. Antonio Nassar
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P.O. Box 128
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In re: New (AM), Bay City, Texas
Facility ID No. 161031
File No. BNP-20040129AAQT

Petition for Reconsideration

Dear Messrs. Nassar and McVeigh:

We have before us a Petition for Reconsideration ("Petition") filed by Antonio Nassar ("Nassar"), dated February 28, 2008, and received February 29, 2008. The Petition objects to the Public Notice dated January 22, 2008, (the "Public Notice"),¹ in which the Media Bureau staff dismissed Nassar's application for a construction permit for a new standard broadcast station in Bay City, Texas (the "Application").² We hereby dismiss the Petition as untimely.

Section 405 of the Communications Act of 1934, as amended (the "Act"),³ and Section 1.106(f) of the Rules,⁴ require petitioners to seek reconsideration no later than 30 days after *Public Notice* of the action for which reconsideration is sought. The Commission generally lacks the authority to extend or waive the statutory 30-day filing period for petitions for reconsideration set forth in Section 405 of the

¹ See *Public Notice*, AM Auction No. 84 Singleton Applications Dismissed for Failure to File, 23 FCC Rcd 739 (MB January 23, 2008).

² We also have a Motion for Leave to File Opposition ("Motion") and Opposition to Petition for Reconsideration ("Opposition") filed by Tom S. Whitehead, Inc. ("TSWT") on March 18, 2008.

³ 47 U.S.C. § 405.

⁴ 47 C.F.R. § 1.106(f).

Act,⁵ absent a showing that a party's failure to file for reconsideration in a timely manner resulted from "extraordinary circumstances."⁶

The *Public Notice* was released on January 22, 2008. Accordingly, a petition for reconsideration was due no later than February 21, 2008.⁷ The Petition was submitted on February 29, 2008, one week after the statutory deadline. In the Petition, Nassar states that he never received in the mail any notification of the dismissal of his application and was therefore unable to timely submit the Petition.⁸ However, in this case the staff dismissed the Application by *Public Notice* (which was published in the *FCC Record*) and did not release a decision letter. The Commission's issuance of a *Public Notice* serves as constructive notice of an action,⁹ and was sufficient to inform Nassar that the Application had been dismissed. We find that Nassar has not demonstrated that his failure to file his Petition in a timely manner resulted from any extraordinary circumstances.

Accordingly, IT IS ORDERED, that the February 29, 2008, Petition for Reconsideration, filed by Antonio Nassar IS DISMISSED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

⁵ See *Reuters Limited v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986). See also *Pueblo Radio Broadcasting Service*, Memorandum Opinion and Order, 6 FCC Rcd 1416 (1991); *Panola Broadcasting Co.*, Memorandum Opinion and Order, 68 FCC 2d 533 (1978).

⁶ *Gardner v. FCC*, 530 F.2d 1085, 1091-92 (D.C. Cir. 1976); *Richardson Independent School District*, Memorandum Opinion and Order, 5 FCC Rcd 3135, 3136 (1990).

⁷ See 47 C.F.R. § 1.4(b).

⁸ Petition at 1.

⁹ See *John Jason Bennett*, Letter, 20 FCC Rcd 17193 (MB 2005), citing *R&S Media*, Memorandum Opinion & Order, 19 FCC Rcd 6300 (2004). See also *Northwest Broadcasting, Inc.*, Memorandum Opinion and Order, 6 Comm. Reg. (P&F) 685 (1997).